

FILED
U.S. DISTRICT COURT

2008 JAN 18 P 4: 27

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

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Attorneys for Plaintiff
GAGE, Inc.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

GAGE, Inc., a Utah corporation,,

Plaintiff,

v.

BIOCONVERSION TECHNOLOGY,
LLC, a Colorado limited liability company;
ROBERT E. KLEPPER, an individual;
KENNETH L. KLEPPER, an individual;
and JOHN DOES 1 through 10,

Defendants.

COMPLAINT AND JURY DEMAND

Case: 2:08cv00057
Assigned To : Benson, Dee
Assign. Date : 1/18/2008
Description: Gage v. Bioconversion
Technology et al

Plaintiff GAGE, Inc. hereby complains against defendants BioConversion Technology, Inc., Robert E. Klepper, Kenneth L. Klepper, and John Does 1 through 10, and for its causes of action alleges as follows:

PARTIES

1. Plaintiff GAGE, Inc. (“GAGE”) is a corporation organized and existing under the laws of the State of Utah with its principal place of business at 230 East South Temple, Salt Lake City, Utah 84111.

2. Defendant BioConversion Technology, LLC (“BCT”) is a limited liability company organized and existing under the laws of the State of Colorado with its principal place of business at 6535 North Washington Street, Denver, Colorado.

3. Defendant Robert E. (“Bud”) Klepper (“Bud Klepper”) is an individual residing in Arvada, Colorado. Bud Klepper is a former manager of BCT.

4. Defendant Kenneth L. Klepper (“Ken Klepper”) is an individual residing in Arvada, Colorado. Ken Klepper is the President of BCT. BCT, Bud Klepper, and Ken Klepper are referred to collectively herein as the “BCT Defendants.”

5. On information and belief, the true capacities, whether individual, corporate, or otherwise, of defendants named herein as John Does 1 through 10 are not fully known to GAGE, which sues such defendants by such fictitious names (collectively the “John Doe Defendants”). The John Doe Defendants are various persons, who participated as co-conspirators in some and/or all of the acts complained of herein and performed acts and made statement in furtherance thereof. Among other things, GAGE believes the John Doe Defendants conspired with and/or induced the BCT Defendants to breach the promises and agreements set forth herein. GAGE will amend this complaint to show the unknown John Doe Defendants’ true names and capacities upon full ascertainment thereof.

JURISDICTION & VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a)(1). There is diversity of citizenship between GAGE, on the one hand, and the BCT Defendants, on the other hand, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. Venue in this Court is proper under 28 U.S.C. § 1391(a)(2). The BCT Defendants are subject to personal jurisdiction in the Central District of Utah and a substantial part of the events giving rise to GAGE's claims arose here.

GENERAL ALLEGATIONS

8. On May 24, 2004, the BCT Defendants and GAGE entered into a written license agreement (the "License Agreement"). Pursuant to the License Agreement and on the terms set forth therein, the BCT Defendants granted GAGE certain license rights in certain technology as defined in the License Agreement.

9. On January 16, 2007 and subsequently on March 7, 2007, BCT sent a letters to GAGE seeking to terminate the License Agreement.

10. Since then, the BCT Defendants have failed and/or refused to perform under the License Agreement.

FIRST CAUSE OF ACTION
(Declaratory Judgment)
(Against the BCT Defendants)

11. GAGE hereby incorporates and realleges paragraphs 1 through 10 of the Complaint as if fully set forth herein.

12. An actual controversy has arisen and now exists between GAGE and the BCT Defendants concerning the parties' respective rights and duties under the License Agreement. The BCT Defendants contend that GAGE is in default under the License Agreement, and that the License Agreement has been terminated. GAGE disputes this contention and asserts that it has satisfied its obligations under the License Agreement which remains valid and enforceable.

13. As a party to the License Agreement, and pursuant to 28 U.S.C. § 2201(a), GAGE is entitled to a declaration determining the respective rights and obligations of the parties under the License Agreement. A declaration from this Court is necessary and appropriate at this time in order that the parties may know and exercise their rights in relation to the marketing of the Technology and the enforcement of GAGE's contractual rights under the License Agreement.

14. Specifically, GAGE is entitled to a declaration that (a) GAGE is not in default of the License Agreement; and (b) the License Agreement is valid and enforceable.

15. GAGE is also entitled to recover the costs and expenses, including reasonable attorneys' fees, it has incurred and will incur in pursuit of this remedy.

SECOND CAUSE OF ACTION
(Breach of Contract)
(Against the BCT, Defendants)

16. GAGE hereby incorporates and realleges paragraphs 1 through 15 of the Complaint as if fully set forth herein.

17. The License Agreement is a valid and binding contract.

18. GAGE has performed, and continues to perform, all of its obligations under the License Agreement.

19. The BCT Defendants have breached the License Agreement, and continue to breach the License Agreement.

20. GAGE has made repeated demanded that the BCT Defendants perform their obligations under the License Agreement.

21. As a direct and proximate result of the foregoing, GAGE has suffered, and will continue to suffer general and consequential damages in an amount to be proven at trial, but not less than \$50 million, plus interest.

22. GAGE is also entitled to recover the costs and expenses, including reasonable attorneys' fees, it has incurred and will incur in connection with the parties' dispute and its pursuit of its remedies under the License Agreement.

23. Because monetary damages alone will not fully compensate and restore the damages to GAGE that have been caused by the BCT Defendants' breach of the License Agreement, GAGE is also entitled to an order and award of specific performance affirmatively requiring the BCT Defendants to honor the terms of the License Agreement.

PRAYER

Wherefore, GAGE respectfully prays for judgment against BCT, Bud Klepper, Ken Klepper, and the John Doe Defendants as follows:

On the First Cause of Action

1. For a declaration that (a) GAGE is not in default of the License Agreement; and
(b) the License Agreement is valid and enforceable; and
2. For all attorneys' fees, expenses, and costs incurred in an amount according to proof.

On the Second Cause of Action

1. For actual damages, including general and consequential damages, in an amount according to proof but not less than \$50 million dollars, plus interest which continues to accrue thereon;
2. For an order and award of specific performance affirmatively requiring the BCT Defendants to honor the terms of the License Agreement.
3. For all attorneys' fees, expenses, and costs incurred in an amount according to proof.

On All Causes of Action

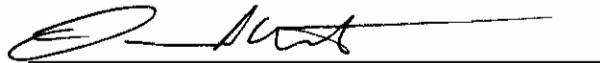
1. For pre- and post-judgment interest on all damages awarded;
2. GAGE's costs of suit incurred herein; and
3. For such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff GAGE, Inc. hereby demands a jury trial of all issues in this action triable as of right by a jury.

DATED: January 18, 2008.

STOEL RIVES LLP



David J. Jordan
David L. Mortensen
Jill M. Pohlman

Attorneys for Plaintiff
GAGE, Inc.

Plaintiff's Address:

230 E. South Temple, Suite 100
Salt Lake City, UT 84111

50 West 3900 South, Suite 1-A
Salt Lake City, UT 84107

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

GAGE, Inc.

(b) County of Residence of First Listed Plaintiff Salt Lake
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

David J. Jordan, David L. Mortensen, Jill M. Pohlman, Stael Rives LLP,
201 South Main, #1100, Salt Lake City, UT 84111-4904, (801) 328-3131

FILED
U.S. DISTRICT COURT
2008 JAN 18 PM 4:27
BioConversion Technology, Inc., Robert E. Klepper, Kenneth L. Klepper, and John Does I et al
County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES)
DISTRICT OF COLUMBIA
BY: DEPUTY CLERK

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | | | |
|---|----------------------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act (Excl. Veterans) <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332 (a)(1)

Brief description of cause:

Suit for damages and specific performance on technology license agreement

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 50,000,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

1-18-08

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

Case: 2:08cv00057

Assigned To : Benson, Dee

Assign. Date : 1/18/2008

Description: Gage v. Bioconversion Technology et al